

SENATE BILL 1786  
By Herron

AN ACT to amend Tennessee Code Annotated, Title 26,  
Chapter 5; Title 35, Chapter 5 and Title 45, relative  
to certain mortgages and deeds of trust.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, Chapter 13, Chapter 1, is amended  
by adding the following language as a new section as follows:

45-13-129.

(a) Notwithstanding any other provision of law to the contrary, no mortgage or deed of trust for a high-cost home loan entered into on or after the effective date of this section may contain a power of sale clause which authorizes the lender to foreclose on property by any means other than under judicial orders.

(b) As used in this section;

(1) "High-cost home loan" means a consumer credit transaction secured by the borrower's principal residence made on or after the effective date of this section, other than an open-end mortgage, reverse mortgage, or bridge loan, and in which either:

(A) The annual percentage rate at consummation will exceed by more than eight (8) percentage points for first-lien loans, or by more than ten (10) percentage points for subordinate-lien loans, the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth (15<sup>th</sup>) day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(B)

(i) For high-cost home loans of more than forty thousand dollars (\$40,000), the total points and fees payable by the consumer at or before a high-cost home loan closing will exceed the greater of six percent (6%) of the total high-cost home loan amount, or five hundred dollars (\$500); the five hundred dollar (\$500) figure shall be adjusted annually on January 1 by the annual percentage change in the consumer price index that was reported on the preceding June 1; and

(ii) For high-cost home loans of forty-thousand dollars (\$40,000) or less, the total points and fees payable by the consumer at or before a high-cost home loan closing is equal to or greater than the percent of the total high-cost home loan amount required pursuant to 12 CFR § 226.32.

(2) "Points and fees" payable by the consumer for a high-cost home loan means:

(A) All items required to be disclosed under 12 CFR §§ 226.4(a) and 226.4(b), as amended from time to time, except interest or the time-price differential and bona fide discount points;

(B) All compensation paid by the consumer to mortgage brokers;

(C) All items listed in 12 CFR §§ 226.4(c)(7), other than amounts held for future payments of taxes, unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor; and

(D) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage, whether or not the debt-cancellation coverage is insurance under applicable law, that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.